

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.1622 OF 2006**

Konkan Railway Corporation Ltd. ...Appellant
Vs.
Shankar Shiva Ghadashi and another ...Respondents

**ALONG WITH
FIRST APPEAL NO.1623 OF 2006**

Konkan Railway Corporation Ltd. ...Appellant
VS.
Rajaram Mahadev Ghadashi and another ...Respondents

Ms Asha Bhambhani for the Appellant
Mr.A.R.Patil,A.G.P. for State in both the Appeals.
Mr.S.B.Shetye for Respondent Nos.1 and 2.

**CORAM: A.S.OKA, J.
DATE : JANUARY 11, 2007.**

P.C.:

1. Notice for final disposal of the Appeals was issued in both the Appeals. The facts of the case in both the Appeals are more or less identical and hence both the Appeals can be disposed of by a common Judgment.

2. The challenge in these Appeals is to the Judgments and Awards made under section 18 of the Land Acquisition Act, 1894. The reference Applications filed by the Claimants were earlier decided without impleading the Appellant Konkan Railway Corporation Ltd. as a party. Therefore, the Judgments and Awards were set aside by this Court and order of remand was passed directing the Reference Court to hear

and decide the references afresh after giving an opportunity to the parties to lead evidence. After passing the order of remand, the Advocate for the Appellant-Corporation cross examined the claimants. The arguments were heard. At the time of arguments written submissions were filed on behalf of the Appellants. Thereafter, impugned Judgment and Award has been passed.

3. The learned Advocate for the Appellant submitted no reasons are recorded by the learned Trial Judge while deciding the references afresh after the order of remand. She submitted that the learned Judge was expected to consider the merits of the case and give reasons for fixing the market rate of the acquired lands. She submitted that ,however, the learned Judge without assigning any reason appears to have relied upon the Judgments delivered by him earlier which were set aside by this Court.

4. Shri Shetye appearing for the Claimants pointed out that after the remand, no evidence was adduced by the Appellants and therefore, the learned Judge has confirmed the findings which were recorded prior to remand and it was not necessary to assign any reasons. He pointed out that the learned Trial Judge has committed an error by not granting interest in terms of section 28 of the Land Acquisition Act, 1894 (hereinafter referred to as the said Act). The learned Advocate for the

Claimants submitted that if this Court is inclined to remand the matter again, the remand may be in terms of the Judgment and Order dated 1st March 2006 passed in First Appeal No.1003 of 2003.

5. I have considered the submissions. It is a well settled position of law that the Claimant in a reference under section 18 of the said Act is in position of a Plaintiff. The burden to establish the inadequacy of the market value offered by the Special Land Acquisition Officer is on the Appellant. The Reference Court is expected to appreciate the oral and documentary evidence and to decide the issue as to what was the market value of the acquired land on the relevant date. It is true that the said exercise was done prior to passing the order of remand. The order of remand was passed in view of the mandate of law laid down by the Apex Court regarding giving an opportunity to the acquiring body to contest the reference application. After the order of remand, the Appellants cross examined the Claimants. The Appellants also made oral submissions and filed written submissions. The earlier Judgments delivered by the Reference Court were specifically set aside by this Court and what was expected of the Reference Court was to consider the entire evidence on record afresh and to record appropriate findings as regards correct market value of the property. I find that in the impugned Judgment there is no discussion whatsoever about the

merits of the evidence led by the Claimants. There is no discussion regarding the submissions made by the Advocates for the parties. Paragraphs 8 and 9 of the impugned Judgment in First Appeal No.1622 of 2006 read thus :

"8. After remand of this matter, there is cross examination to the claimant on behalf of the referee No.2 i.e. Konkan Railway Corporation Ltd. On behalf of the Konkan Railway Corporation, there is no oral evidence. The Ld. Counsel for the Konkan Railway Corporation Ltd., during the course of Arguments, submitted that 35 AREs are is not acquired, 23 ARE area is acquired. However, if we perused the award passed by the Land Acquisition Officer, it is seen that while calculating the acquired area, there is arithmetic mistake and the are acquired is 35 AREs. In order to prove the rate of that locality, the claimant has produced the copy of Index which is at Exh.79 and 80. While deciding the reference of that locality, I have granted the enhanced compensation of Rs.2,000/- per ARE in Land reference No.140/1994. While deciding this reference my brother Judge granted the enhanced compensation of Rs.2,000/- per ARE. While deciding this reference also, my brother Judge had taken into consideration all the documents filed on record.

9. In order to reduce the compensation which is granted earlier, no other cogent evidence brought on record by Konkan Railway Corporation Ltd. Therefore, in my view, the claimants are entitled to get enhanced compensation at the rate of Rs.2,000/- per ARE. Hence, I have answered the Issue Nos.1,2 and 3 accordingly and proceed to pass the following order."

The same is the reasoning in the impugned Judgment in the other Appeal.

6. The only reason given is that the earlier Judgment stands as it is as the Appellant has not led any evidence for reducing the rate fixed by the earlier Judgment. The learned Judge could not have relied upon the earlier Judgment which was specifically set aside by this Court. After the order of remand, the Appellant cross examined the Claimants. Oral and written submissions were made on behalf of the Appellants. The learned Judge was under an obligation to consider the evidence and to record proper findings. As the position stands today, the Reference Court has not recorded any independent findings. Therefore, the Advocates for the Appellant rightly submitted that the matter may be sent back so that the learned Judge can deliver proper Judgment.

7. There is merit in the submissions made by the Advocate for the Claimants that the benefit under section 28 of the said Act is not given. In my view, the course adopted by this Court in First Appeal No.1003 of 2003 will have to be adopted. However, now it is not necessary to give an opportunity to the parties to lead further evidence.

8. Hence, I pass the following order :

- i) The impugned Judgments and Awards are set aside. The Reference Applications under section 18 of the said Act are restored. The parties are directed to appear before the learned Trial Judge on 31st January 2007 at 11.00 a.m. The Reference Court will hear the oral submissions of the Advocates for the parties and will decide the reference afresh in the light of the observations made by this Court in this Judgement.
- ii) There is no dispute between the parties that the Appellant has deposited 50% of the amount awarded by the Reference Court under the impugned Judgments and Awards. In case the amount is not deposited, the Appellant will deposit 50% of the amount within six weeks from today. On deposit of such amount the

learned Judge will release 50% out of the said amount in favour of the Claimants without any security and after the Claimants furnish the solvent surety in respect of the rest of the amount, the same will also be released in favour of the Claimants. No order as to costs.

- iii) The Reference Court is expected to decide the matter as expeditiously as possible and in any event by end of April 2007.
- iv) The Appeals are partly allowed in above terms with no order as to costs.
- v) Parties and the concerned Court to act upon an authenticated copy of this Judgment.
- vi) Writ to be sent forthwith.

Judge.